

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

APR 4 2024

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

GANIYU AYINLA JAIYEOLA,

Plaintiff - Appellant,

v.

APPLE INC.,

Defendant - Appellee.

No. 23-3086

D.C. No. 5:23-cv-03462-EJD

MEMORANDUM*

Appeal from the United States District Court
for the Northern District of California
Edward J. Davila, District Judge, Presiding

Submitted March 26, 2024**

Before: TASHIMA, SILVERMAN, and KOH, Circuit Judges.

Ganiyu Ayinla Jaiyeola appeals pro se from the district court's order denying his motion for relief under Federal Rule of Civil Procedure 60(b)(3) in his federal and state law employment discrimination action. We have jurisdiction under 28 U.S.C. § 1292(a)(1). We review for an abuse of discretion. *United States*

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

v. Asarco, Inc., 430 F.3d 972, 978 (9th Cir. 2005). We affirm.

The district court did not abuse its discretion in denying Jaiyeola's Rule 60(b)(3) motion because Jaiyeola failed to demonstrate any basis for such relief. *See Casey v. Albertson's Inc.*, 362 F.3d 1254, 1260 (9th Cir. 2004) (to prevail under Rule 60(b)(3), the "moving party must prove by clear and convincing evidence" that judgment was obtained through fraud, misrepresentation, or other misconduct that was not "discoverable by due diligence before or during the proceedings" (citation and internal quotation marks omitted)); *see also* Fed. R. Civ. P. 62.1(a)(2) (providing that the district court may deny a timely filed motion for leave for relief, even if motion is filed after notice of appeal).

AFFIRMED.